IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 7630 of 2007(G)

PETITIONER:

M/S.XEROX INDIA LTD. , 36/1951,1ST FLOOR, KALOOR TOWERS, ELAMKULAM ROAD, KALOOR, KOCHI-682 017,ERNAKULAM DISTRICT, REGISTERED OFFICE 503, 5TH FLOOR,KRISHNAAPRA PLAZA,P-3, SECTOR-18.NOIDA-201 301 REP. BY ITS CA MANAGER, ERNAKULAM. MR.P.VISWANATHAN.

BY ADV. SRI.A.KUMAR

RESPONDENTS:
----

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY,COMMERCIAL TAXES, GOVERNMENT OF KERALA,ERNAKULAM, KERALA.

2. COMMISSIONER OF SALES TAX DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM.

3. DEPUTY COMMISSIONER (APPEALS), DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM.

4. ASSISTANT COMMISIONER (AUDIT ASSESMENT), DEPARTMENT OF COMERCIAL TAXES, ERNAKULAM,KERALA.

BY GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 7630/2007 G

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER OF PENALTY DT. 21/11/2006 BY R4.

EXT.P2. COPY OF THE DEMAND NOTICE DT. 4/12/2006.

EXT.P3. COPY OF THE MEMORANDUM OF APPEAL DT. 23/12/2006 FILED BEFORE THE R3.

EXT.P4. COPY OF THE INTERIM ORDER IN APPEAL AGAINST THE PENALTY ORDER DT. 23/1/2007.

EXT.P5. COPY OF THE ASSESSMENT ORDER T. 30/08/2006 BY R3.

EXT.P6. COPY OF THE ORDER OF STAY DT. 9/1/2007 IN APPEAL AGAINST ASSESSMENT ORDER 30/8/06.

EXT.P7. COPY OF THE ORDER DT. 30/1/2007 BY THIS COURT IN WPC NO. 2941/2007.

EXT.P8. COPY OF THE ORDER CT. 24398/06/CT/ DT. 29/6/2006 BY R2.

True copy

tga

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 7630 OF 2007-G

JUDGMENT

The petitioner challenges Ext.P4 order. It is an order passed on an interlocutory application for stay filed along with Ext.P2 appeal. Ext.P1 order imposing penalty is under challenge in Ext.P2. The penalty is imposed for the reason that the petitioner paid tax for the computer peripherals only at the rate of 4%, whereas he was liable to pay at 12%. But, in view of Ext.P8 clarification issued by the Commissioner of Commercial Taxes, the petitioner may be liable to pay tax only at the rate of 4%. If that be so, there is no justification for directing the petitioner to pay 50% of the amount of penalty. Accordingly, it is ordered that if the petitioner furnishes security for the amount due under Ext.P1, recovery of penalty imposed thereunder shall be kept in abeyance till the disposal of Ext.P2 appeal. This direction is issued in lieu of the direction in Ext.P4 order.

The Writ Petition is disposed of as above.

7th March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/